

**REMARKS**

**I. Introduction**

Claims 8-17 are now pending in the present application after the addition of new claims 15-17. Claim 8 has been amended. Applicants hereby respectfully request further examination and reconsideration of the application.

**II. Rejection of Claims 8-10 and 13 under 35 U.S.C. §102(e)**

Claims 8-10 and 13 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application Publication No. 2004/0002815 (“Ishizaki”). Applicants respectfully submit that the rejection should be withdrawn for at least the following reasons.

In order to reject a claim under 35 U.S.C. §102(e), the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (See Scripps Clinic & Research Foundation v. Genentech, Inc., 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter. (See Akzo, N.V. v. U.S.I.T.C., 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)). To the extent that the Examiner may be relying on the doctrine of inherent disclosure, the Examiner must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flow from the teachings of the applied art.” (See M.P.E.P. § 2112; emphasis in original; see also Ex parte Levy, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int'l. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherence of that result or characteristic.

Amended claim 8 recites, in relevant parts, “**a control apparatus executing a function to evaluate data from the first acceleration sensor to differentiate between a collision with a pedestrian and bad road conditions which produce acceleration forces upon a chassis of the vehicle.**”

Ishizaki only refers to detecting collisions, and does not teach or suggest the additional feature of differentiating collisions from bad road conditions. Therefore, Ishizaki does not anticipate claim 8 and its dependent claims 9, 10 and 13. Accordingly, withdrawal of the anticipation rejection is requested.

New claims 15-17 depend on claim 13, which in turn depends on claim 8. In addition, claims 15-17 recite subject matter not taught or suggested by the cited prior art. Therefore, claims 15-17 are allowable over the cited prior art.

### **III. Rejection of Claims 11, 12 and 14 under 35 U.S.C. §103(a)**

Claim 11 was rejected under 35 U.S.C. §103(a) as being unpatentable over Ishizaki in view of U.S. Patent Pub. No. 2002/0180596 (“Mattes ‘596”). Claim 12 was rejected under 35 U.S.C. §103(a) as being unpatentable over Ishizaki in view of U.S. Patent Pub. No. 2002/0175499 (“Mattes ‘499”). Claim 14 was rejected under 35 U.S.C. §103(a) as being unpatentable over Ishizaki in view of U.S. Patent Pub. No. 2004/0011582 (“Aoki”). Applicants respectfully submit that these rejections should be withdrawn for at least the following reasons.

In rejecting a claim under 35 U.S.C. §103(a), the Examiner bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, the Examiner must show, *inter alia*, that there is some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify or combine the references, and that, when so modified or combined, the prior art teaches or suggests all of the claim limitations. M.P.E.P. §2143. In addition, as clearly indicated by the Supreme Court, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to [modify] the [prior art] elements” in the manner claimed. *See KSR Int’l Co. v. Teleflex, Inc.*, 82 U.S.P.Q.2d 1385 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, at 1396. To the extent that the Examiner may be relying on the doctrine of inherent disclosure in

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support of the obviousness rejection, the Examiner must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flow from the teachings of the applied art.” (See M.P.E.P. § 2112; emphasis in original; see also Ex parte Levy, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990)).

Claims 11, 12 and 14 ultimately depend from claim 8. As noted above, Ishizaki fails to anticipate claim 8. Mattes '596, Mattes '499 and Aoki do not remedy the deficiencies of Ishizaki as applied against claim 8. Accordingly, the combination of Ishizaki, Mattes '596, Mattes '499 and Aoki does not render obvious independent claim 8, as well as dependent claims 11, 12 and 14. Withdrawal of the obviousness rejections is respectfully requested.

### Conclusion

In view of the foregoing, it is respectfully submitted that pending claims 8-17 are in condition for allowance. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is respectfully requested.

Respectfully submitted,  
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